STATE OF MICHIGAN

COURT OF APPEALS

CAROL CARLISLE-BRADFORD,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED
September 28, 2001

No. 223041
Jackson Circuit Court
LC No. 98-090597-CL

Before: Neff, P.J., and O'Connell and R. J. Danhof*, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. Having viewed the record evidence in the light most favorable to plaintiff, I am unable to conclude that the trial court erred in determining that the evidence was insufficient as a matter of law to support a claim of hostile environment sexual harassment. In my view, a careful review of the record does not yield genuine factual disputes on which reasonable minds could differ regarding whether, under the totality of the circumstances, the conduct at issue was "sufficiently severe or pervasive to create a hostile work environment." *Quinto v Cross & Peters Co*, 451 Mich 358, 369; 547 NW2d 314 (1996). I would affirm the trial court's grant of summary disposition in favor of defendant.

In her brief on appeal, plaintiff argues that the June 1996 attack by an inmate is persuasive evidence of a hostile work environment when considered in conjunction with the totality of the circumstances. In *Slayton v Ohio Dep't of Youth Services*, 206 F3d 669, 677 (CA 6, 2000) the Sixth Circuit Court of Appeals recognized that inmate conduct, standing alone, will not support a hostile environment claim. Specifically, the *Slayton* Court opined:

> Prisoners, by definition, have breached prevailing societal norms in fundamentally corrosive ways. By choosing to work in a prison, corrections personnel have acknowledged and accepted the probability that they will face inappropriate and socially deviant behavior. [*Id.*]

However, the *Slayton* Court recognized that a hostile environment claim may be predicated on inmate conduct where prison personnel "encouraged, endorsed, and even instigated

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

the inmates' harassing conduct." *Id.* at 678. In *Slayton*, there was evidence that the plaintiff's coworker encouraged the inmates to engage in harassing conduct, such as telling prisoners to drop their towels when the plaintiff was on shower duty, and leading the inmates in sexually provocative dances. *Id.* at 674. The coworker also provided the inmates with snacks and sexually explicit CDs, and made offensive comments to the inmates regarding the plaintiff.[1]

In my view, the fact that plaintiff was assaulted by an inmate, viewed in conjunction with the totality of the circumstances, is insufficient to create a factual dispute with regard to whether the conduct alleged was sufficiently severe and pervasive to create a hostile environment. A thorough review of the record evidence does not demonstrate that defendant's employees encouraged, endorsed or instigated the inmate's attack. Plaintiff asserted in her deposition that she observed Matthews talking and laughing with the prisoner shortly before the attack, and that Ingersoll and Matthews routinely bent the rules for the inmate, and did not immediately come to her aid when she was assaulted. Plaintiff also alleged that Matthews and Ingersoll "set [her] up." However, plaintiff was unaware of any agreement between Matthews and Ingersoll and the inmate to harm plaintiff. I share the trial court's view that plaintiff's general accusations are insufficient to demonstrate a genuine factual dispute regarding whether defendant's employees encouraged and instigated the attack. See also *McCallum v Dep't of Corrections*, 197 Mich App 589, 601; 496 NW2d 361 (1992) (declining to extend "single-incident" theory of hostile environment claim to prison setting because prisoners "are unable to be law-abiding and . . . live in an inherently hostile environment.").

I would affirm the trial court's grant of summary disposition in favor of defendant.

/s/ Peter D. O'Connell

[1] In *Slayton*, the plaintiff testified that she overheard the coworker tell the inmates "Don't worry about that b**ch; she's not going to be here that much longer; she's going to be fired." *Id.* at 674.